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File No. O Fugitive offenders

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Fugitive offenders Act, 1881

P3E

133-A

File No. O Fugitive offenders /41

Std. Scott. Silp 24-B

C O N T E N T S.

Legal Department File No. O.Fugitive Offenders/8 41.

S.No.	Compilation No.	Subject	Pages.
		Opinions under the Fugitive Offenders Act, 1881.	
1.	O.No.~~348~~ 39/1/1941.	Indian Pinal Code-Sec.419 code of Criminal procedure sec.75. Indian Extradition Act, Sec.19.... Extradition from Auckland in New Zealand to British India..... Whether the warrant issued by the Magistrate is in order.	1 - 2.

M.V.V.
25/4

L.D.R.I. No.10853/1940

Office of the R.L.A.

These papers relate to the extradition from Auckland in New Zealand to British India of one Daji son of Vallabh, alias Gondabhai alias Dayabhai son of Lala Ramji for trial on a charge of cheating by personation punishable under section 419 of the Indian Penal Code. The Magistrate P.C. Jalalbad, who inquired into the charge, had forwarded the papers of the inquiry together with a warrant purporting to be one under section 76 of the Code of Criminal Procedure, for being transmitted to the Comptroller of Customs, New Zealand, for further action.

2. The first question raised for the consideration of the Remembrancer of Legal Affairs is whether the warrant issued by the Magistrate is in order. The warrant is addressed to the Comptroller of Customs, New Zealand, Wellington, New Zealand being a British possession the proceedings for extradition in this case will be governed by the Fugitive Offenders Act. 1881 (44 and 45 Vict.C.69) Part I, since New Zealand is not grouped with British India for the purposes of Part II by any Order in Council. (See Muddiman on Extradition pp.63-64 where the effect of the several Orders in Council, in so far as British India is concerned, is stated). A warrant issued for the purposes of this Act cannot be directed to any person outside the jurisdiction of the Magistrate issuing it. (See R.L.A's opinions No. 552-P, dated the 30th October 1933 and No.3-Confl. dated the 9th January 1939). The warrant in this case is therefore without jurisdiction and legally not in order. Moreover it does not mention the accused's true name, which appears to be Daji Vallabh (See Ex.1 at p.7 ante) and it appears advisable to mention in the warrant all the names assumed by the ad used. The attention of the Political and Services Department is

invited in this connection to the opinion of the Advocate General of Bengal incorporated in the Government Resolution No. 7277, dated the 19th December 1887 in which the proper procedure to be followed in such cases is stated.

3. The next question is whether the Provincial Government can take action in the matter. In his U.R. to P.& S.D. No. 2575, dated the 14th May 1937, the Remembrancer of Legal Affairs held that, in view of section 19 of the Indian Extradition Act, 1903, as adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, action in such cases cannot be taken by the Provincial Government but would have to be taken by the Central Government. It is true that the Central Government has since entrusted to Provincial Governments the functions of the Central Government under certain provisions of the Indian Extradition Act. (Government of India Notification No. 67-X dated the 1st April 1938) But the functions thus entrusted to the Provincial Government do not include the powers under section 19(a) of the Act. Consequently the notification in question does not modify the position stated in the opinion of the Remembrancer of Legal Affairs cited above.

Sd.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No 840 dated the 29th January 1941.

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